



Exempt Action Final Regulation Agency Background Document

Approving authority name	State Water Control Board
Primary action	9VAC25-20
Secondary action(s)	None
Regulation title	Fees for Permits and Certificates
Action title	Fees for Permits and Certificates (Rev. A10wt)
Date this document prepared	June 27, 2010

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 A of the Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 36 (06) and 58 (99)

Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

This final exempt regulatory action is being taken to implement provisions of budget item 355 of House Bill 30 (HB 30), as enacted by 2010 General Assembly. This action makes changes in the amount of permit maintenance fees assessed in order to recover \$1,250,000 of revenue removed from general fund appropriations during the 2010 General Assembly. This action ensures that permit maintenance fees continue to cover a portion of the direct costs for administration, compliance and enforcement of Virginia Pollutant Discharge Elimination System (VPDES) and the Virginia Pollution Abatement (VPA) permits. As required by HB 30, this action also provides for a cap on the amount of permit fees collected and revises the permit maintenance fee cap on certain public authorities with multiple facilities.

Statement of final agency action

Please provide a statement of the final action taken by the agency, including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

At the June 21-22, 2010, meeting the State Water Control Board took final action to adopt amendments to the regulation entitled "Fees for Permits Regulations and Certificates," specifically, 9VAC25-20-142. The regulatory action is to be effective on July 1, 2010 or as soon thereafter as possible consistent with the Administrative Process Act.

This regulation amendment is specifically exempted from the state administrative procedures for adoption of regulations contained in Article 2, Chapter 40, Title 2.2 of the Code of Virginia (the Administrative Process Act) by the provisions of budget item 355 of HB 30, as enacted by 2010 General Assembly, and the amendment is therefore necessary to conform to Virginia budgetary law.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
20-142.	N/A.	Permit Maintenance Fees.	N/A.
A 1.	N/A.	Sets fee amounts to be applied annually for each individual VPDES permit.	Increases all base fee amounts by 64.1 percent. Necessary to recover \$1,250,000 budget shortfall.
A 2.	N/A.	Sets fee amounts to be applied annually for each individual VPA permit.	Increases all base fee amounts by 64.1 percent. Necessary to recover a \$1,250,000 budget shortfall.
N/A.	A 3.	None.	Provides a method of calculating annual adjustments in permit maintenance fees based upon increases in the average Consumer Price Index from a 2009 base year average value. Necessary to recover future additional budgetary shortfalls that result from increased direct costs related to the VPDES and VPA permit programs.
N/A.	A 4.	None.	Provides for rounding fees to the nearest dollar. Necessary to simplify the calculation, billing and payment of fees.
N/A.	A 5.	None.	Provides a regulatory limit on VPDES and VPA permit fees collected. Necessary to incorporate the limit required in HB 30 language.
B 3.	N/A.	Provides a monetary cap on total permit maintenance fees due from certain public authorities with multiple facilities.	Increased cap on permit maintenance fees by 64.1 percent. Necessary to recover a \$1,250,000 budget shortfall.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: (1) the establishment of less stringent compliance or reporting requirements; (2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; (3) the consolidation or simplification of compliance or reporting requirements; (4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and (5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

An analysis of the proposal was completed for alternative regulatory methods that will minimize the adverse impact on small businesses without compromising health, safety, environmental and economic welfare.

1. Less stringent fee amounts will fail to recover sufficient funds to support the Virginia Pollutant Discharge Elimination System and Virginia Pollution Abatement permit programs and will compromise the administration, compliance and enforcement of those permit programs. Increasing application fees for VPDES and VPA permits is not a sufficiently reliable source of funds to guarantee that the annual budgetary shortfall will be recovered. Failure to provide annual permit maintenance fee increases based on rising costs will increase the shortfall every year and gradually undermine the effectiveness of those permit programs. Compromised funding of water permit programs will compromise public health, safety, environmental and economic welfare.
2. Delay in implementing the fee increases until 2011 will result in a budgetary shortfall of \$1,250,000 for the 2010 fee collection year (2011 fiscal year), and will compromise the administration, compliance and enforcement of Virginia Pollutant Discharge Elimination System and Virginia Pollution Abatement permit programs and will compromise public health, safety, environmental and economic welfare.
3. Consolidation of any compliance or reporting requirements that will delay submission of annual maintenance fees will compromise public health, safety, environmental, and economic welfare.
4. There are no performance standards, operational standards or design standards associated with annual VPDES or VPA permit program fees.
5. Since small businesses make up the majority of facilities subject to the fee increases, exemption of small businesses as a class from fee increases will compromise public health, safety, environmental, and economic welfare.

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability.

It is not anticipated that these regulation amendments will have a direct impact on families. However, fee increases may be passed along to families in the form of small increases in utility bills or other product and service costs. There will be positive indirect impacts in that the regulation amendments will ensure that the Commonwealth's water control regulations will be funded as intended by the General Assembly and will function as effectively as possible, thus contributing to reductions in related public health and welfare problems.

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